not necessary to differ from his conclusion on this point.

It was also proved that in December 1935 the accused issued a District Court summons against Baban Singh describing him as a trader having his place of business at No. 1236-B Upper Serangoon Road. This is the place where the Empire Steel Trunk Company's business was carried on.

It may be taken as proved therefore that the accused was fully aware that, nominally at all events, Baban Singh was the proprietor of the business.

Then later in 1936 the accused took bankruptcy proceedings against Bachoo Singh and on the 50th September 1936 in the course of such proceedings swore an affidavit, paragraph 5 of which reads as follows:

> "The business now being carried on at No. 1235-B Serangoon Road Singapore is really and truly the business of the debtor herein. Baban Singh who was a watchman in Singapore and who is now on leave in India has no interest at all in the business. The said Baban Singh has only lent his name to help the debtor herein to evade payment to his creditors by carrying on his own business in another man's name."

Now in the charge the last sentence of the paragraph is omitted, but if the substance of the whole paragraph is looked at, what it means is that though Baban Singh was the nominal proprietor of the business, in fact it belonged to Bachoo Singh.

Now it may well be, as the prosecution allege, and as the learned District Judge seems to find, that it is not true that Baban Singh is only the nominal proprietor of a business that belongs to Bachoo Singh, but there has never been any proof one way or the other, and in the absence of such proof the two statements are not irreconcilable.

A parallel case would be that of a plaintiff having a claim in respect of shares registered in the name of A B, but which he has reason to suspect are the property of C D. His plaint might be drawn in the alternative alleging both A B and C D as the beneficial owner of the shares. In the F.M.S. a plaint has to be sworn and, if the contentions of the prosecution in this case are correct, the plaintiff would immediately have committed an offence under section 193 as one of the two statements must necessarily be false. The answer is that in the supposed case of the shares, the prosecution could not possibly succeed unless they could prove, as an irresistible conclusion from facts within the Plaintiff's knowledge that one or other of his allegations was necessarily untrue. Where however the proof of an allegation depends on mixed questions of law and fact such proof would almost certainly not be forthcoming.

So in the present case, it is quite impossible for the Court to say that the allegation that Baban Singh was the nominal, and Bachoo Singh the real, owner of the Empire Steel Trunk Company is incapable of proof, or that the accused knew perfectly well or had reason to believe that it was incapable of proof. In any case the prosecution was not directed to the point, as no evidence was called as to whether or not Baban Singh was merely the nominal owner of the business.

The previous statement that Baban Singh was the proprietor, may only mean that he was the nominal proprietor, and is irrelevant to the issue whether he was or was not the beneficial proprietor. There is no need in this case to consider whether the evidence of inconsistency is sufficient, as no evidence on the real issue was called at all.

I find therefore that the statements which form the subject of the charge are not necessarily irreconcilable, and that the learned District Judge misdirected himself on this point. The appeal therefore was allowed, the conviction quashed and the sentence set aside.

Appeal allowed.
Conviction quashed.

[COURT OF CRIMINAL APPEAL]
TERRELL, AG. C. J.,
THOMAS, C. J. (F.M.S.) & HOWES, J.
July 10, 1937.

V. K. S. SAMY v. REX

[CRIMINAL APPEAL No. 3 of 1937]

Evidence—system—admissibility of evidence of—Evidence Ordinance (Cap. 13) Ss. 14 and 15

Evidence of previous transactions of a similar character can be admitted under Sections 14 and 1-5 of the Evidence Ordinance, not only to rebut the defence of accident but also in a proper case to prove *mens rea*. It is relevant where the accused admits having done the acts constituting an offence with the commission of which he stands charged but seeks to exculpate himself by saying that the acts were done at the direction of his superior. *Teo Koon Seng* v. *Rex*, 5 M.L.J. 10 distinguished.

CRIMINAL APPEAL.

The accused appellant was for over 9 years Chief Clerk on the Batang Malakka Estate. He was in full charge of the estate office and one of his duties was to look after estate accounts. Some time towards the end of 1936, the Manager of the estate one Mr. Vowler, as a result of certain information received by him, looked into the estate accounts and found therein an item of $737-50 entered in the cash book as a payment to a firm known as Sin Loong Chong. It was discovered on further investigation that the counterfoil of the cheque was made out to Sin Loong Chong but that the cheque was made out in the name of Messrs. K. P. M. Mohamed Sultan Brothers. Further investigations disclosed the fact that the cheque was handed to K. P. M. Mohamed Sultan Brothers. The account of this firm with the estate showed that $437-50 of the cheque for

$737-50 was appropriated towards payment of their account and $300/– was handed back as cash. This sum of $300 entered in the ledger account of the estate as a cash payment was handed to the appellant. At the May Assizes holden at Malacca before Mr. Justice W. K. Horne sitting with a jury, the appellant was charged with having committed falsification of accounts under section 477a of the Penal Code and criminal breach of trust as a servant under section 408 of the Penal Code. At the trial the prosecution sought to adduce evidence of system. Counsel for the defence objected to the admission of this evidence and his objection was over-ruled. The appellant was found guilty on both charges and sentenced on the first charge to 6 months rigorous imprisonment and a fine $1,000 or 12 months in default and on the second charge to 6 months rigorous imprisonment, the sentences to run concurrently. The accused appealed and the appeal was heard before the Court of Criminal Appeal. The Court dismissed the appeal in an oral judgment which was delivered by Terrell, Ag. C.J.

Braga for the appellant.

Storr, Crown Counsel, for the respondent.

TERRELL, AG. C.J.—In this case the Court is agreed that the Appeal be dismissed.

Among the various points raised so ably by Mr. Braga in this Appeal, there is the very difficult question as to the cases in which evidence of system can be admitted.

In the present case the Court finds that such evidence of previous transactions can be admitted under Sections 14 and 15 of the Evidence Ordinance—the illustrations to Section 14 make that quite clear.

It is not only to rebut the defence of accident that such evidence can be admitted; it can also in a proper case be called to prove a state of mind, to prove criminal intention.

In the case before the Court this evidence was particularly relevant because the accused did not deny that he had made the false entries, he did not deny that he had the money. He said that he made the false entries under the direction of Mr. Vowler and that Mr. Vowler had had the money. So surely it must be relevant to look to previous transactions to see what the previous method of business had been, so as to arrive at a conclusion whether or not that defence would hold water. Is it likely that Mr. Vowler would have asked the accused to falsify various items in the account to the extent of one or two dollars? Still more is it likely that the accused would have continued to falsify the accounts on Mr. Vowler's instructions when Mr. Vowler was not in the country? That is what the accused alleged.

It appears that that was substantially the defence and in order to rebut it this other evidence was absolutely relevant.

There is nothing so far as I can see inconsistent with what I said in the judgment which has been cited in the Malayan Law Journal (*Teo Koon Seng* vs. *Rex*, 5 M.L.J., p.10). It is quite a different case and evidence of an entirely separate transaction had been brought in to prove guilty intention. There was no connection between the two sets of circumstances in that case. The whole issue was whether the accused had attempted to extort money or not. If the Court was satisfied that he had extorted money, no explanation was possible, and it was not permissible to prove that the accused extorted money from A because on an entirely different occasion he had extorted money from B. In this case on the other hand the questions whether the money had been taken and the accounts falsified were not in dispute. The only matter in dispute which the Crown had to satisfy the Jury was the knowledge or intention with which the acts had been done. The Crown were not trying to prove that the accused had committed the particular offences charged, by proving that he had committed similar offences on other occasions. They were anticipating the defence that he was only an abettor, and that the criminal intention which was the essence of the charges alleged, was absent.

As regards sentence, in the opinion of the Court the two sentences of six months rigorous imprisonment are very mild. It is possible that another Court might have thought it better to give twelve months or eighteen months on each charge and make these sentences run concurrently. As it is the total sentence apart from the fine is only twelve months and the Court considers that such sentence should not be interfered with.

Appeal dismissed.

[COURT OF CRIMINAL APPEAL]

TERRELL, Ag. C.J., THOMAS, C.J. (F.M.S.) and HOWES, J.

June 18, 1937.

TEH PENG KIM v. REX

[SINGAPORE CRIMINAL APPEAL No. 1 of 1937]

Criminal law—destruction of valuable security—"fraudulently" or "dishonestly"—charge—duplicity—judge's summing-up—misdirection—Penal Code, S. 477; Criminal Procedure Code, S. 215 (2).

The two words "fraudulently" and "dishonestly" in section 477 of the Penal Code are to be treated as different aspects of the criminal intention essential to the offence of destroying a valuable security; hence a charge alleging fraud and dishonesty in the alternative is not bad for duplicity. It is desirable, however, that the charge under this section should be so framed as to allege either fraud or dishonesty, thereby avoiding the slightest